



In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 608

A. H. PHILLIPS, INC., PETITIONER

v.

L. METCALFE WALLING, ADMINISTRATOR OF THE
WAGE AND HOUR DIVISION, UNITED STATES
DEPARTMENT OF LABOR

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES CIRCUIT COURT OF APPEALS FOR THE FIRST
CIRCUIT

MEMORANDUM FOR RESPONDENT

While we believe the decisions below are correct, we do not oppose the granting of certiorari because of the clear conflict among the decisions of several Circuit Courts of Appeals on the question involved and because of the importance of the question. This case involves the same question raised in *Walling v. Block*, 139 F. (2d) 268 (C. C. A. 9), in which certiorari was denied on

March 27, 1944, 321 U. S. 788, namely, whether a chain store system's central warehouse and office, which performs the wholesale or quasi-wholesale functions for the system's retail stores, is a retail establishment within the exemption provided by Section 13 (a) (2) of the Fair Labor Standards Act of 1938, c. 676, 52 Stat. 1060, 29 U. S. C., sec. 201.

The decision below in the instant case is in direct conflict with the decision of the Ninth Circuit in the *Block* case. As pointed out by the Court below, its decision also conflicts with the reasoning of the Seventh Circuit's opinion in *Walling v. L. Wiemann Co.*, 138 F. (2d) 602, certiorari denied on March 13, 1944, 321 U. S. 785, and of the Sixth Circuit's opinion in *Allesandro v. C. F. Smith Co.*, 136 F. (2d) 75; but is in accord with the reasoning of the Third Circuit in *Walling v. American Stores Co.*, 133 F. (2d) 840, and with a dictum in the Seventh Circuit's opinion in *Walling v. Goldblatt Bros.*, 128 F. (2d) 778, 783. The importance of the question was discussed in our petition for writ of certiorari in *Walling v. Block*. As there pointed out the question affects a large number of companies and their employees, since more than one-third of the 6,969 chain store organizations listed in the Census of Business, 1939, are reported to operate separate warehouses or separate central offices and

more than 100,000 employees are engaged in the warehouses and central offices affected.

For these reasons, we do not oppose the petition.
Respectfully submitted.

CHARLES FAHY,
Solicitor General.

DOUGLAS B. MAGGS,
Solicitor of Labor.

NOVEMBER 1944.